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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written submission by the Commission on Human Rights of the Philippines*

Note by the Secretariat

The Secretariat of the Human Rights Council hereby transmits the communication submitted by the Commission on Human Rights of the Philippines**, reproduced below in accordance with rule 7(b) of the rules of procedures described in the annex to Council resolution 5/1, according to which participation of national human rights institutions is to be based on arrangements and practices agreed upon by the Commission on Human Rights, including resolution 2005/74 of 20 April 2005.

* National human rights institutions with "A" status accreditation from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

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Annex

[English only]

Submission by the Commission on Human Rights of the Philippines

Statement of the Commission on Human Rights of the Philipinnes for the Biennial High-Level Panel: death penalty

1. Pursuant to its constitutional mandate to "monitor government's compliance with its international treaty obligations on human rights" and its power "to recommend to Congress effective measures to promote human rights," the Commission on Human Rights strongly opposes the re-imposition of the death penalty. Reinstating capital punishment will certainly produce myriad of implications, both legal and moral, and will have a long term effect both in the domestic and international spheres.

2. The Philippines abolished the death penalty under the 1987 Constitution. In 1993, however, capital punishment was reintroduced under Republic Act 7659[1] to address perceived rising criminality. Seven executions were committed in 1999, signalling the enforcement of the law and an attempt to abate criminality. In the same year, criminality increased by 15.3%[2]. Appeals from groups against the death penalty, which cited its non-deterrent effect in the commission of crimes compelled the Philippine government to issue a moratorium. In 2003, de facto moratorium on executions were lifted, but reprieves were since then issued on scheduled executions because of evidences that exonerated persons on death row. On 24 June 2006, R.A. 9346, "An Act prohibiting the imposition of the Death Penalty in the Philippines" was enacted and signalled abolishing death penalty in the country, for the second time.

3. On 20 November 2007, the Philippines ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (ICCPR 2nd OP, 1989). The Second Optional Protocol of the ICCPR declares in Article I, that:

- No one within the jurisdiction of a State Party to the present Protocol shall be executed.
- Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

4. Article 6 of the Second Optional Protocol further states that "the present Protocol shall not be subject to any derogation," signifying that there is no mechanism provided for the State Party to withdraw from the Covenant, thus guaranteeing against reinstatement of the death penalty.

5. Presently, the legislative agenda of the government includes the re-imposition of the death penalty once again. The most prominent rationale given for the death penalty is that it deters crime. Proponents have high hopes, in the midst of *perceived* or imagined rising

[1] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as Amended, Other Special Penal Laws, and for Other Purposes.

[2] Commission on Human Rights of the Philippines, "The Philippine Experience in 'Abolishing' the Death Penalty," January 2007, http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/advisories/pdf_files/abolishing%20death%20penalty.pdf

criminality, that reviving capital punishment will deter would-be criminals as it instils fear, as fear of death comes as a strong natural discouragement. And this fear is also perceived or imagined because those studying criminology will tell you that criminals don't really ponder on the fear of death. What they do is they plan how they can perpetrate the crime and how they can successfully escape apprehension.

6. Those who favour the death penalty in reality really want something done about crime, us included. It's a yearning for justice. Yet several studies and action research carried out by universities, research institutes, international organizations, and civil society show that there is no conclusive evidence that the death penalty deters any crime.

7. Data we compiled from the Philippine Statistics Authority and the Philippine National Police also show that the numbers of crimes committed do not provide for a compelling trend or do not necessarily support the argument of imposing death penalty due to rising criminality.[3] The Philippine National Police reported a significant drop in the country's crime rate in the early part of 2016. The PNP said the total crime volume decreased by 13% through the first and second quarters of 2016 -- from 52,950 crime incidents in January to 46,060 in June 2016. According to Reuters, same PNP statistics show that serious crime was already in decline during previous administration.[4]

8. The Commission on Human Rights of the Philippines believes that justice can be attained through effective law enforcement, impartial access to redress mechanism and courts, and a responsive penal system. We don't want any crime to go unpunished. What *is* a deterrent is a functional, unbiased, efficient justice system that guarantees certainty of punishment for perpetrators through due process and rule of law, together with broad public confidence. We want to work towards this goal.

9. Even those who advocate for the death penalty would like to see that certain safeguards are in place in the implementation of capital punishment. The problem is, we all know the justice system is not infallible, not in any country. So how can we advocate for the death penalty in which the taking of life is permanent and mistakes cannot be rectified? The proper response to the failure of our justice system is political will to effectively apprehend, prosecute and rehabilitate criminals. To mete out criminals the very final, irrevocable and inhuman verdict of death is tantamount to punishing them for the failure of the system.

10. The yearning to stop the current scourge of drug addiction and its links to criminality is understandable. But to fight crime with violent assertion and revenge as motivation will only perpetuate a culture of violence. Instead, we should develop a credible justice system that works for all, a system that is incorruptible, with objectivity and impartiality. We need to be focusing on strengthening our methods on crime investigation such as application of reliable scientific evidence, such as DNA testing, efficient case documentation and sound judgment of facts. We need to upscale and hone the skills of our police and investigators to gather and handle data and information in ways that will materially enhance the reliability of all evidence presented in prosecutions. We also need to better train our prosecutors to ensure no form of prosecutorial misconduct.

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[3] PNP data showed that from January to December 2015, murder has gone down 1.16 percent which is an added rationale for the killings that have been involved in the campaign against drugs. Homicide has been down 15.35 percent. Crimes against persons 18.18 percent. In 2009 PNP has implemented a new crime reporting system, and if you take a look at the series of reporting and was quoted from the Philippine Statistics Authority Statistical Handbook, it's a yearbook, the trend is really going down, and if there are ever sharp rises in the reporting of crimes particularly index crimes, this is because they (PNP) have changed the reporting system, e-blotter is actually one of those changes. So when we compare the statistics, we only can compare a certain chunk of years.

[4] ABS-CBN News , "PNP: Crime rate down, but murder rate up," 19 December 2016, http://news.abs-cbn.com/news/12/19/16/pnp-crime-rate-down-but-murder-rate-up Last accessed: 30 January 2017.

11. All this will help ensure that those who commit crimes are caught and held accountable. It has been demonstrated time and again, that a fair, professional and competent judicial system provides better overall results than one endemic with corruption, incompetence or lack of resources. Further, we have nothing to fear from a judicial system that follows the rule of law and respects the rights of all - defendants, victims and witnesses.

12. It is also not only at home that our people are at risk of being put to death. Many of our Filipino migrants find themselves caught up in similarly flawed criminal justice systems abroad. For that reason we must work not only at home but also with transnational networks.

13. Maybe we should ask the question – not only are you for or against the death penalty, but also take a look at the reasons why some people want it. Of course they want justice. But under what conditions within which they would want a death penalty to be imposed in our country. Maybe the condition should be an impartial justice system, fair trial for all, especially the most vulnerable, poor litigants. And defendants. We also reflect perhaps on wanting the death penalty – should we want it for our brother, our sister, our sons, our daughters, our mothers, our fathers, for ourselves, do we want it? And try to ask ourselves for what purpose do we want it. Do we really want justice, or do we really just want to perpetuate the hate.

14. Our existing criminal justice system should also be balanced with restorative justice, where we do not treat punitive punishment as the only effective means in changing the behaviours of the offenders, but involving all stakeholders of justice – the offenders, victims and the affected communities – in seeking truth, healing and reconciliation. It is time for all of us to stand up and be counted in the movement towards a restorative justice system that fairly punishes offenders and takes on the responsibility to repair the harm committed against victims, their families and communities.